

FIRST REGULAR SESSION

HOUSE BILL NO. 899

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GRATZ, NORDWALD AND MERIDETH (Co-sponsors).

Read 1st time February 26, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1733L.03I

AN ACT

To repeal sections 343.010, 343.030, 343.040, 343.050, 343.060, 343.070, 343.080, 343.090, 343.100 and 343.250, RSMo 2000, and to enact in lieu thereof twenty new sections relating to licensing of auctioneers, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 343.010, 343.030, 343.040, 343.050, 343.060, 343.070, 343.080, 2 343.090, 343.100 and 343.250, RSMo 2000, are repealed and twenty new sections enacted in 3 lieu thereof, to be known as sections 343.350, 343.353, 343.356, 343.359, 343.362, 343.365, 4 343.368, 343.371, 343.374, 343.377, 343.380, 343.383, 343.386, 343.389, 343.392, 343.395, 5 343.401, 343.404, 343.407 and 343.410, to read as follows:

343.350. As used in sections 343.350 to 343.410, the following terms shall mean:

- 2 **(1) "Auctioneer", a person or entity who, for another, for a fee, compensation,**
3 **commission or any other valuable consideration at auction or with the intention or**
4 **expectation of receiving valuable consideration by means of or process of an auction or sale**
5 **at auction or providing an auction service, offers, negotiates or attempts to negotiate an**
6 **auction contract, sale, purchase or exchange of goods that may be lawfully kept or offered**
7 **for sale by or at auction;**
8 **(2) "Board", the state board of auctioneers;**
9 **(3) "Goods", any chattels, merchandise, real or personal property, or commodities**
10 **of any form or type which may be lawfully kept or offered for sale.**

343.353. It is unlawful for any person in this state to engage in the occupation of
2 **auctioneering unless such person has first obtained a license pursuant to sections 343.350**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3 to 343.410.

343.356. There is hereby created the "State Board of Auctioneers" for the purpose of licensing all persons engaged in the practice of auctioneering. The board shall have control and supervision of the licensed occupations and enforcement of the terms and provisions of sections 343.350 to 343.410.

343.359. 1. The board shall be composed of five members, including one voting public member, appointed by the governor with the advice and consent of the senate.

2. All members shall be citizens and residents of this state and qualified voters of this state for at least one year preceding their appointments. Auctioneer members shall be licensed pursuant to the laws of this state and shall have been actively engaged in the lawful practice of auctioneering for a period of at least five years, and after January 1, 2002, licensed as auctioneers pursuant to sections 343.350 to 343.410. The public member shall be a person who is not and never was a member of any profession licensed or regulated pursuant to sections 343.350 to 343.410 or the spouse of such person; a person who does not have and never has had a material financial interest in either the providing of the professional services regulated by sections 343.350 to 343.410, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 343.350 to 343.410. All other members including the public member shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements, or the technical competence or technical judgment of a licensee or a candidate for licensure.

3. At no time shall there be more than three members of the same political party on the board.

4. Each member shall be appointed by the governor for a five-year term, except that of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years.

343.362. The governor shall designate one of the members as the first chairman and thereafter the senior member shall serve as chairman. Vacancies in the board shall be filled for the unexpired term in the same manner as the original appointments are made. The governor may remove any member for cause.

343.365. 1. The board shall administer and enforce the provisions of sections 343.350 to 343.410, prescribe the duties of its officers and employees, and adopt, publish and enforce such rules and regulations within the scope and purview of sections 343.350 to 343.410 as may be considered by the board to be necessary or proper for the effective

5 administration and interpretation of sections 343.350 to 343.410, and for the conduct of its
6 business and management of its internal affairs. The board shall:

7 (1) Conduct examinations of applicants for licensure to practice the professions
8 pursuant to sections 343.350 to 343.410 and issue licenses;

9 (2) Employ and remove board personnel, as defined in subdivision (4) of subsection
10 15 of section 620.010, RSMo, as may be necessary for the efficient operation of the board,
11 within the limitations of its appropriation;

12 (3) Determine the sufficiency of the qualifications of applicants;

13 (4) Hire and retain staff and support personnel, including counsel, as are necessary
14 for conducting board business;

15 (5) Publish annually a list of names of all auctioneers licensed pursuant to sections
16 343.350 to 343.410. The list shall also contain the names of all persons whose license has
17 been suspended or revoked within the proceeding year, as well as any other information
18 relevant to the enforcement of the provisions of sections 343.350 to 343.410 that the board
19 may deem of interest to the public; and

20 (6) Administer the state board of auctioneers fund.

21 2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
22 that is created under the authority delegated in sections 343.350 to 343.410 shall become
23 effective only if it complies with and is subject to all of the provisions of chapter 536,
24 RSMo, and, if applicable, section 536.028, RSMo. Sections 343.350 to 343.410 and chapter
25 536, RSMo, are nonseverable and if any of the powers vested with the general assembly
26 pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and
27 annul a rule are subsequently held unconstitutional, then the grant of rulemaking
28 authority and any rule proposed or adopted after August 28, 2001, shall be invalid and
29 void.

343.368. No official action may be taken unless a majority of the whole board may
2 vote.

343.371. 1. Applicants for examination or licensure pursuant to sections 343.350
2 to 343.410 shall possess the following qualifications:

3 (1) The individual must be a person of good moral character, have an education
4 equivalent to the successful completion of the twelfth grade or general educational
5 development certificate and be at least eighteen years of age; and

6 (2) A diploma from an auction school that is approved by the board.

7 2. The sufficiency of the qualifications of applicants shall be determined by the
8 board, but the board may delegate this authority to its executive director subject to such
9 provisions as the board may adopt.

10 **3. For the purpose of meeting the minimum requirements for examination, training**
11 **completed by a student shall be recognized by the board for a period of no more than one**
12 **year from the date it is received.**

343.374. 1. Every person desiring to sit for the examination for any of the
2 **occupations provided for in sections 343.350 to 343.410 must file with the board a written**
3 **application on a form supplied to the applicant, and submit proof of age and education**
4 **qualifications along with the required fees. Each application must contain a statement that**
5 **it is made under oath or affirmation and that its representations are true and correct to the**
6 **best knowledge and belief of the person signing the same, subject to the penalties of making**
7 **a false affidavit or declaration.**

8 **2. If the board finds that the applicant has submitted the credentials required for**
9 **admission to the examination and has paid the required fees, the board shall admit such**
10 **applicant to examination for licensure.**

11 **3. The examination of applicants for licenses to practice pursuant to sections**
12 **343.350 to 343.410 shall be conducted by the state board of auctioneers and shall include**
13 **questions on ethics, reading, writing, spelling, a general knowledge of the statutes of**
14 **Missouri relating to deeds, mortgages, contracts of sale, agency, lease, auctions, brokerage,**
15 **elementary arithmetic, mathematics, the provisions of sections 343.350 to 343.410 and other**
16 **subject matters determined by the board to be appropriate to license classifications, except**
17 **as otherwise provided in this section.**

343.377. 1. Any person who is licensed as an auctioneer by any county in this state
2 **on August 28, 2001, may apply for an auctioneer license without taking the examination**
3 **as set forth in this section. To apply for such license, an applicant shall submit an**
4 **application and tender with such application the appropriate license fee.**

5 **2. Upon verification of the information contained in the application and upon the**
6 **individual being found to be otherwise qualified, the board shall issue the applicant a**
7 **license without examination.**

343.380. 1. After January 1, 2002, no person shall practice as or hold himself or
2 **herself out as a licensed auctioneer unless such person has obtained a license pursuant to**
3 **the provisions of sections 343.350 to 343.410. Any person who violates this subsection shall**
4 **be guilty of a class C misdemeanor and shall be disqualified from exercising the rights or**
5 **pursuing the business of an auctioneer for a period of one year.**

6 **2. Beginning with the renewal of a license expiring on or after January 1, 2003, the**
7 **board may require as a condition precedent to the renewal of any license that all licensees**
8 **complete continuing auction education, approved by the board, of six hours per licensee.**

343.383. 1. All licenses granted pursuant to sections 343.350 to 343.410 shall be for

2 a term of two years.

3 2. No examination shall be required for the renewal of any license, unless such
4 license has been revoked. In such case, the applicant shall take and pass the written
5 examination offered by the board before a new license may be issued.

6 3. Licensees shall have a sixty-day grace period beyond a renewal date to renew a
7 license. If a license is not renewed by the end of the grace period, it is revoked and a new
8 license may only be issued pursuant to the provisions of sections 343.350 to 343.410.

343.386. 1. Notice in writing shall be given to the board by each licensee of any
2 change of business location within thirty days after any change in location, whereupon the
3 board shall issue a new license for the unexpired period.

4 2. A change of business location shall automatically cancel the license previously
5 issued.

343.389. 1. The board shall determine the time and place of the examination which
2 shall be given not less than four times a year at intervals approximately ninety days apart.

3 2. An examination fee of one hundred dollars shall be collected from each
4 applicant.

5 3. The biannual renewal fee for an auctioneer license shall be one hundred dollars.

343.392. 1. If an applicant passes the examination to the satisfaction of the board
2 and has paid the fees required and complied with the requirements of sections 343.350 to
3 343.410, the board shall issue a license.

4 2. The board shall prepare and deliver to each licensee a license and pocket card.

5 3. Auction facility operators shall display their licenses conspicuously and at all
6 times in their place of business. All other licenses shall be kept on file in the licensee's place
7 of business.

8 4. All licensees shall carry their pocket cards with them when performing
9 auctioneering tasks, to be shown upon request.

10 5. A duplicate license or replacement for a lost license or pocket card shall be
11 replaced upon request by the licensee and payment of a fee of fifteen dollars.

343.395. 1. The license requirements of section 343.350 to 343.410 shall not apply
2 to any of the following types of auctions:

3 (1) Auctions of goods by an individual who personally owns such goods, and who
4 did not acquire such goods for the purpose of resale. This exemption applies only to
5 individuals, and not partnerships, corporations or other business entities; and

6 (2) Auctions conducted for any charitable, religious or civic organization which has
7 tax exempt status and for which the auctioneer receives no compensation.

8 2. Any properly enrolled student in a regularly scheduled term of an auction school

9 approved by the state board of auctioneers is exempt from having a license while
10 participating in an auction school approved auction.

343.401. The board shall dispense with the examination of an applicant, as
2 provided in sections 343.350 to 343.410, and shall grant a license provided that the
3 applicant has complied with the requirements of another state, territory of the United
4 States or District of Columbia wherein the requirements for licensure are substantially
5 equal to those in force in this state at the time the application of the license is filed if such
6 state, territory or the District of Columbia has a reciprocity provision for persons licensed
7 in this state, upon due proof that the applicant at the time of making the application holds
8 a current license in the other state, territory of the United States or District of Columbia,
9 and upon the payment of a fee equal to the licensing fees required to accompany an
10 application for a renewal of a license. A licensee who is currently under disciplinary action
11 with another auctioneering board shall not be licensed by reciprocity.

343.404. 1. The board may refuse to issue any license pursuant to sections 343.350
2 to 343.410 for one or any combination of causes stated in subsection 2 of this section. The
3 board shall notify the applicant in writing of the reasons for the refusal and shall advise
4 the applicant of the applicant's right to file a complaint with the administrative hearing
5 commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of a license or licenses
8 required by sections 343.350 to 343.410 or any person who has failed to renew or has
9 surrendered the person's license or licenses for any one or any combination of the following
10 causes:

11 (1) Use or illegal possession of any controlled substance, as defined in chapter 195,
12 RSMo; use of an alcoholic beverage to an extent that such use impairs a person's ability
13 to perform the work of any profession licensed or regulated by sections 343.350 to 343.410;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of
15 guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the
16 United States for any offense reasonably related to the qualifications, functions or duties
17 of any profession licensed or regulated pursuant to the provisions of sections 343.350 to
18 343.410, for any offense an essential element of which is fraud, dishonesty or an act of
19 violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any license
21 issued pursuant to sections 343.350 to 343.410 or in obtaining permission to take any
22 examination given or required pursuant to sections 343.350 to 343.410;

23 (4) Obtaining or attempting to obtain any fee, charge or other compensation by

24 **fraud, deception or misrepresentation;**

25 **(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or**
26 **dishonesty in the performance of the functions or duties of any profession licensed or**
27 **regulated by sections 343.350 to 343.410;**

28 **(6) Violation of, or assisting or enabling any person to violate, any provision of**
29 **sections 343.350 to 343.410, or of any lawful rule or regulation adopted pursuant to**
30 **sections 343.350 to 343.410;**

31 **(7) Impersonation of any person holding a license or licenses or allowing any**
32 **person to use his or her license or licenses;**

33 **(8) Disciplinary action against the holder of a license or other right to practice any**
34 **profession regulated by sections 343.350 to 343.410 granted by another state, territory,**
35 **federal agency or country upon grounds for which revocation or suspension is authorized**
36 **in this state;**

37 **(9) A person is finally adjudged insane or incompetent by a court of competent**
38 **jurisdiction;**

39 **(10) Assisting or enabling any person to practice or offer to practice any profession**
40 **licensed or regulated by sections 343.350 to 343.410 who is not licensed and is currently**
41 **ineligible to practice pursuant to sections 343.350 to 343.410;**

42 **(11) Issuance of a license based upon a material mistake of fact;**

43 **(12) Failure to display a valid license if so required by sections 343.350 to 343.410**
44 **or any rule promulgated pursuant to the provisions of sections 343.350 to 343.410;**

45 **(13) Violation of any professional trust or confidence;**

46 **(14) Use of any advertisement or solicitation which is false, misleading or deceptive**
47 **to the general public or persons to whom the advertisement or solicitation is primarily**
48 **directed.**

49 **3. After the filing of such complaint, the proceedings shall be conducted in**
50 **accordance with the provisions of chapter 621, RSMo. Upon a finding by the**
51 **administrative hearing commission that the grounds for disciplinary action are met, the**
52 **board may, singly or in combination, censure or place the person named in the complaint**
53 **on probation on such terms and conditions as the board deems appropriate for a period**
54 **not to exceed two years, or may suspend, for a period not to exceed five years, or revoke**
55 **the license, certificate or permit.**

56 **4. The board, acting upon its own knowledge or written or verified complaint filed**
57 **by any person, may discipline a person as provided in this section or the board may bring**
58 **an action to enjoin any person, firm or corporation from engaging in an occupation**
59 **regulated by the provisions of sections 343.350 to 343.410 if such person, firm or**

60 corporation without being licensed to do so by the board engages in or practices an
61 occupation licensed pursuant to the provisions of sections 343.350 to 343.410. The action
62 shall be brought in the county in which such person resides, or, in the case of a firm or
63 corporation, where the firm or corporation maintains its principal office; and unless it
64 appears that such person, firm or corporation so engaging or practicing such occupation
65 is licensed, the injunction shall be issued and such person, firm or corporation shall be
66 enjoined from engaging in such activities throughout the state.

67 5. Any licensee who has had his or her license revoked shall not be issued another
68 license for a period of one year from the date of revocation.

343.407. 1. All fees provided for in sections 343.350 to 343.410 shall be payable to
2 the director of the division of professional registration in the department of economic
3 development who shall keep a record of the account showing the total payments received
4 and shall immediately thereafter transmit them to the department of revenue for deposit
5 in the state treasury to the credit of a fund to be known as the "State Board of Auctioneers
6 Fund", which is hereby created. All the salaries and expenses for the operation of the
7 board shall be appropriated and paid from such fund.

8 2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys
9 in this fund shall not be transferred and placed to the credit of general revenue until the
10 amount in the fund at the end of the biennium exceeds two times the amount of the
11 appropriation from the board's funds for the preceding fiscal year.

343.410. No person shall sell real estate at auction unless such person is licensed to
2 sell real estate pursuant to chapter 339, RSMo.

[343.010. 1. No person shall exercise the trade or business of a public
2 auctioneer by selling any goods, property or real estate, without a license.

3 2. "Auctioneer", as used in section 150.380, RSMo, and sections 343.010,
4 343.070 to 343.105 is one who sells goods, merchandise, or property of any kind, at
5 public or private auction, for another person, and who receives any commission or
6 compensation of any kind for conducting such sale; but not including one who
7 conducts such a sale by or under the jurisdiction of any court, or pursuant to any
8 judicial judgment or order, or any foreclosure sale of real estate, and not including
9 any owner of any goods, merchandise or property of any kind, who himself conducts
10 such sale.]

[343.030. The clerks of the respective county commissions shall issue, at
2 each term, as many blank auction licenses for ten days, and for one, three, six and
3 twelve months, respectively, as requested.]

[343.040. The licenses shall be under the seals of the respective county
2 commissions, signed by the clerk, and shall authorize the persons to whom granted
3 to exercise the trade and business of auctioneers, by selling any property, real or
4 personal, by auction within the county for the period of time specified in such

5 license.]

2 [343.050. The clerk shall deliver the blank licenses so issued to the collector
3 of the counties, respectively, and charge them with the amount thereof, in a book to
be kept for that purpose.]

2 [343.060. The county commission shall, at every term, settle with the
3 collector for all blank licenses delivered to him and not before accounted for, and
4 give him credit for all blank licenses returned, and charge him with all not returned;
5 and, as soon as may be, the clerk shall, under the direction of the county commission,
6 certify to the state auditor the amount with which each collector stands charged, who
shall charge such collector therewith.]

2 [343.070. Each collector shall grant to any person, upon application and upon
3 compliance with the requirements of this chapter, an auction license for ten days, or
4 for one, three, six or twelve months, and for that purpose fill up and countersign one
of the blank licenses received from the clerk.]

2 [343.080. 1. There shall be levied upon every license, to be paid to the
county clerk before the delivery thereof, a fee as follows:

- 3 (1) On each license for one month, ten dollars;
4 (2) On each license for three months, twenty dollars;
5 (3) On each license for six months, thirty dollars;
6 (4) On each license for twelve months, fifty dollars.

7 2. An auctioneer license issued in any county of this state shall be valid in
8 each county of this state during the period for which it is issued.

9 3. All fees imposed by this section shall be paid into the county general
10 revenue fund.]

2 [343.090. In each case of a license delivered, there shall be paid to the county
clerk two dollars as an issuance fee to the clerk. The fee shall be paid into the
3 county's general revenue fund.]

2 [343.100. No person shall be permitted to sell goods or property of any kind
at auction unless he shall have resided in this state six months next preceding the
3 time of making application for license. Except that any nonresident individual may
4 be granted a license to engage in auctioneering in this state upon application and
5 payment of the appropriate fees set out in this chapter.]

2 [343.250. Every person who shall violate any of the provisions of this chapter
is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not
3 less than twenty nor more than five hundred dollars, and shall be disqualified from
4 exercising the rights or pursuing the business of an auctioneer for a period of one
5 year from the date of his conviction. After January 1, 1979, every person who shall
6 violate any of the provisions of this chapter is guilty of a class C misdemeanor and
7 shall be disqualified from exercising the rights or pursuing the business of an
8 auctioneer for a period of one year from the date of his conviction.]